

March 6, 2019

Re: Inaccurate Fiscal Impact Report on SB196 No Resources for Federal Immigration Law

Dear Governor Lujan Grisham, Senate Majority Leader Wirth and Speaker Brian Egolf:

Senate Bill 196—introduced during the current legislative session—would ensure immigrant families have access to crucial public safety services without fear of deportation. The Fiscal Impact Report for SB 196 contains an inaccurate analysis indicating the State of New Mexico could lose millions of dollars in federal funding if this law was passed. This analysis fails to take into account numerous recent federal court decisions that have unanimously shielded federal grant funding from the Trump administration's efforts to punish jurisdictions that do not aid in the enforcement of federal immigration laws. It is extremely unlikely this bill would imperil any federal funding to our state.

Early in the Trump administration, there were fears the administration might withhold all federal funds from jurisdictions that did not collaborate with immigration enforcement, based on President Trump's wide-ranging interior enforcement executive order.¹ But the section of the order relating to federal funds was swiftly found unconstitutional, and has been permanently enjoined.² The court held the federal government cannot withhold any funds that are unrelated to immigration enforcement.³ The many court rulings have universally reiterated the power of the purse sits squarely with Congress and cannot lawfully be usurped by the Executive for its own political purpose.⁴ Since the court's decision, the Trump administration has not attempted to revive its sweeping threat against jurisdictions that do not facilitate immigration enforcement.

Instead, the federal government has asserted much more limited authority to withhold federal funds. There are currently three federal grants to which the Department of Justice has attempted to attach immigration conditions—Byrne JAG, COPS (community policing) and the “Gang Suppression Grant Program.” But in every instance the attempted imposition of these conditions has been blocked by the courts and the administration has been ordered to disburse the funds without demanding compliance with the conditions.⁵ In two of these decisions, covering all three grant

¹ See, Executive Order 13768, January 25, 2017, available here: <https://www.govinfo.gov/content/pkg/FR-2017-01-30/pdf/2017-02102.pdf>.

² See *Cty. of Santa Clara v. Trump*, 275 F. Supp. 3d 1196 (N.D. Cal. 2017), *aff'd in part, vacated in part on other grounds, remanded sub nom. City & Cty. of San Francisco v. Trump*, 897 F.3d 1225 (9th Cir. 2018), *see also*, Vivian Yee, New York Times, April 25, 2017, *Judge Blocks Trump Effort to Withhold Money From Sanctuary Cities*, available here: <https://www.nytimes.com/2017/04/25/us/judge-blocks-trump-sanctuary-cities.html>.

³ *Cty. of Santa Clara v. Trump*, 275 F. Supp. 3d 1196, 1214 (N.D. Cal. 2017) (“The Executive Order’s attempt to condition all federal grants . . . clearly runs afoul” of Constitutional rules for spending conditions by attaching immigration conditions to unrelated “categories of federal funding, such as funding related to Medicare, Medicaid, transportation, child welfare services, immunization and vaccination programs, and emergency preparedness.”)

⁴ *City & County of San Francisco v. Trump*, 897 F.3d 1225, 1235 (9th Cir. 2018) (“Absent congressional authorization, the Administration may not redistribute or withhold properly appropriated funds in order to effectuate its own policy goals.”)

⁵ *City of Philadelphia v. Attorney Gen. of United States of Am.*, No. 18-2648, 2019 WL 638931 (3d Cir. Feb. 15, 2019), *City of Los Angeles v. Sessions*, No. 18-cv-7347 (C.D. Cal. Feb. 15, 2019) 2019 WL _____ (C.D. Cal. 2019); *City of Los Angeles v. Sessions*, 293 F. Supp. 3d 1087 (C.D. Cal. 2018); *City of Philadelphia v. Attorney Gen. of United States of Am.*, No. 18-2648, 2019 WL 638931 (3d Cir. Feb. 15, 2019); *City of Chicago v. Sessions*, 888 F.3d 272 (7th Cir. 2018); *City of Chicago v. Sessions*, 321 F. Supp. 3d 855 (N.D. Ill. 2018); *San Francisco v. Sessions*,

programs, nationwide injunctions have been entered against any further effort by the federal government to impose immigration-enforcement conditions on any of these categories of federal grants.⁶

Several New Mexico cities and counties also receive federal funding through the Operation Stonegarden program. Although there are no court decisions that specifically relate to the federal government withholding funding from this program in an attempt to push states into enforcing federal immigration law, the logic of the court decisions cited above clearly applies. Moreover, since there does not appear to be any requirement in the Stonegarden program for recipients to use state or local resources to aid federal agencies in enforcing federal immigration law, the passage of SB196 is unlikely to affect this program in any event. Finally, recent public statements made by New Mexico recipients of this funding indicate they are “not enforcing federal immigration laws.”⁷

As a sovereign State, New Mexico has the right to opt out of enforcing federal programs against its own residents. As the U.S. Supreme Court has repeatedly explained, the Tenth Amendment to the U.S. Constitution guarantees states the ability to “decline to administer [a] federal program.”⁸ Just last year, the Supreme Court reiterated the “basic principle” that “Congress cannot issue direct orders to state legislatures,” holding that the federal government cannot “prohibit[] a State from enacting” laws it prefers.⁹ Simply put, states have every right to opt out of immigration enforcement, and “[s]tanding aside does not equate to standing in the way.”¹⁰

In sum, SB196 is a lawful exercise of the State’s constitutional prerogative to keep state and local officers out of the business of federal immigration enforcement.¹¹ And courts have consistently ruled against the federal government for trying to withhold even the limited federal grants that have actually been tied to certain immigration conditions. To date, the Trump administration has threatened to withhold law enforcement grants from 30 jurisdictions around the country it believes are not doing enough to collaborate work with federal immigration agents, and all but one, where litigation is still pending, have received or been cleared to get the money.¹²

For all these reasons there is no genuine cause for concern that passage of SB196 would result in the withholding of any federal funds to the state of New Mexico. It will, however, improve public safety in our communities, and help protect the rights of all New Mexico residents. We urge you

2018 WL 4859528 (N.D. Cal. Oct. 5, 2018); *Philadelphia v. Sessions*, 309 F. Sup. 3d 289 (E.D. Pa. 2018), *aff’d in relevant part*, 2019 WL 638931 (3d Cir. 2019).

⁶ *City of Los Angeles v. Sessions*, No. 18-cv-7347 (C.D. Cal. Feb. 15, 2019), 2019 WL _____ (C.D. Cal. 2019); *City of Los Angeles v. Sessions*, 293 F. Supp. 3d 1087 (C.D. Cal. 2018).

⁷ (See “Dona Ana County Commissioners Approve New Stonegarden Grant,” *Las Cruces Sun-News*, September 12, 2018, <https://www.lcsun-news.com/story/news/2018/09/12/dona-ana-county-commissioners-approve-new-stonegarden-grant/1286205002/>).

⁸ *Printz v. United States*, 521 U.S. 898 (1997); *New York v. United States*, 505 U.S. 144, 177 (1992).

⁹ *Murphy v. Nat’l Collegiate Athletic Ass’n*, 138 S. Ct. 1461, 1478 (2018).

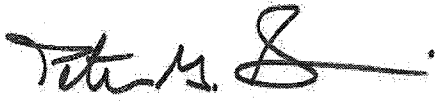
¹⁰ *United States v. California*, 314 F. Supp. 3d 1077, 1105 (E.D. Cal. 2018); *see id.* at 1104 (“California’s decision not to assist federal immigration enforcement in its endeavors is not an ‘obstacle’ to that enforcement effort.”).

¹¹ *See United States v. California*, 314 F. Supp. 3d 1077 (E.D. Cal. 2018).

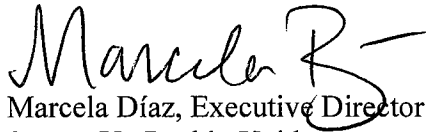
¹² “‘Sanctuary’ Cities are Getting Their Grants Despite Threats,” *Santa Fe New Mexican*, March 3, 2019, http://www.santafenewmexican.com/news/local_news/sanctuary-cities-are-getting-their-grants-despite-threats/article_1e741026-ba3d-50d5-9682-109767c54357.html; **citation for Oregon suit if you have it.**

to support this important bill.

Sincerely,

A handwritten signature in black ink, appearing to read "Peter M. S.", with a long horizontal flourish extending to the right.

Peter Simonson, Executive Director
ACLU of New Mexico

A handwritten signature in black ink, appearing to read "Marcela R.", with a large, stylized "R" and a horizontal flourish.

Marcela Díaz, Executive Director
Somos Un Pueblo Unido

Cc: Matt Garcia, General Counsel to Gov. Michelle Lujan Grisham